

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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STATE OF NEW YORK, et al.,

Plaintiffs,

- v -

No. 06-CV-810

UNITED STATES OF AMERICA, et al.,

Defendants.

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**NOTICE OF DEFENDANTS' MOTION TO DISMISS FOR LACK  
OF SUBJECT MATTER JURISDICTION**

**PLEASE TAKE NOTICE** that the Defendants United States of America and Ernest J. Moniz, Secretary of the United States Department of Energy,<sup>1</sup> through undersigned counsel, will move and hereby do move this Court pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for dismissal of Plaintiffs' Complaint because exclusive jurisdiction over Plaintiffs' Nuclear Waste Policy Act claim lies in the United States Courts of Appeals, and this Court therefore lacks jurisdiction to proceed to the merits. The aforesaid grounds are more fully set forth in Section B of Defendants' Combined Memorandum in Opposition to Plaintiffs' Motion to Dismiss Complaint and in Support of Defendants' Motion to Dismiss, filed herewith.

Dated: Washington, D.C., June 10, 2013.

Respectfully submitted,

WILLIAM J. HOCHUL, JR.  
United States Attorney  
MARY K. ROACH  
Assistant U.S. Attorney

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<sup>1</sup> Secretary Moniz is substituted for former Secretary Steven Chu pursuant to Federal Rule of Civil Procedure 25(d).

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 10, 2013, I electronically filed the foregoing Notice of Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all listed counsel of record.

/s/ Stacey Bosshardt  
Stacey Bosshardt